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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: SNA 214F 2810 Office: SAN ANTONIO, TEXAS Date: AUG 25 2003

IN RE: Petitioner: [redacted]

Petition: Petition for Approval of School for Attendance by Nonimmigrant Students under Sections 101(a)(15) (M)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(M)(i)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. §103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Petition for Approval of School for Attendance by Nonimmigrant Students (Form I-17) was denied by the District Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the case will be remanded to him for entry of a new decision.

The Form I-17 reflects that the petitioner in this matter, [redacted] is a private school established in 1980. The petitioning school offers flight training and seeks initial approval for attendance by M-1 nonimmigrant students.

The district director denied the petition on February 10, 2003, after determining that the petitioner was not in compliance with the record-keeping requirements of the Bureau of Citizenship and Immigration Services (BCIS). The district director also found that the petitioner had improperly enrolled and possibly employed nonimmigrants without authorization.

On appeal, the petitioner submits a three-page statement with no additional documentation.

The first issue to be discussed is the finding of the district director that the petitioner failed to comply with the regulatory record-keeping requirements. In his decision, the district director states, "[t]he inspector found that numerous records pertaining to the twelve (12) students enrolled at the school were missing some vital enrollment information." However, the district director failed to identify what "vital enrollment information" is missing. Further, we are also unable to discern from the district director's decision whether the missing information actually relates to M-1 students at the petitioning school. We note that in the district director's request for further evidence, he requests the petitioner to provide information "for all current foreign students." However, that the regulation cited by the district director in his denial, 8 CFR §214.3 (g), requires schools to retain information on F-1 and M-1 nonimmigrant students only, not any student who is of foreign descent. The petitioner would not be in violation of the regulation for failing to retain information on students who were not in M-1 nonimmigrant status.

The second issue indicated in the district director's decision is the petitioner's enrollment and employment of nonimmigrants without approval of the BCIS. We must note, however, that the regulations only restrict the actions of schools as they relate to the issuance of the Form I-20 to persons other than F-1 or M-1 nonimmigrant students or out of status students seeking reinstatement. The district director indicates that two students attended the petitioning school in a status other than M-1 nonimmigrant status. The regulations do not prohibit schools from enrolling illegal aliens, aliens who are out of status, or aliens in any other nonimmigrant status. Therefore, the fact that an illegal alien, or an alien who is not in status, enrolls in a school, is a violation on the part of the alien, not the school. In his decision, the district director does not allege that the petitioner actually *issued* Forms I-20 to any alien other than an M-1 nonimmigrant student. Therefore, while we do feel that certain actions by the petitioner were questionable, especially the allegation of hiring an alien whose status had expired, such actions do not violate any of the regulations pertaining to school responsibilities and approval for nonimmigrant students.

We do note, however, that according to the contractor who performed the on-site visit at the petitioning institution, the Principal Designated School Official (PDSO) stated that he was responsible for recruiting international students. 8 C.F.R. §214.3(l) specifically states "an individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official." The district director, on remand, should follow-up with the petitioner on this issue to determine whether the PDSO or any other designated school official receives compensation for the recruitment of foreign students.

Regardless of whether the petitioner committed violations of other sections of the regulations, we find that the evidence submitted thus far does not establish the petitioner's eligibility for approval to enroll nonimmigrant students. However, as neither the request for evidence nor the district director's decision contained a discussion of the petitioner's failure to establish it meets the eligibility requirements, the petitioner must be afforded an opportunity to submit the required documentation.

First, the petitioner has failed to establish that its courses will allow an M-1 nonimmigrant student to maintain a full course of study. 8 CFR §214.2(m)(9) states, in pertinent part:

> A *full course of study* . . . means –
> * * *
> (iii) Study in a vocational or other nonacademic curriculum . . . certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work . . . .

The Form I-17 filed by the petitioner indicates that there are no actual classes taught, but instead, the petitioner provides one-on-one instruction. The petitioner did not submit a catalogue, a description of its training program or any other evidence that demonstrates students coming to study as M-1 nonimmigrants will be enrolled in at least 18 to 22 clock hours per week of instruction. We note that a letter contained in the record, written by [redacted] the president of the petitioning school, indicates that "a full time student should fly one hour each day." On remand, the district director should request that the petitioner submit evidence that establishes M-1 nonimmigrant students would be engaged in instruction for at least 18 to 22 clock hours.

A second issue to be addressed on remand is whether the petitioner has submitted the supporting documentation required by regulation to accompany a petition for approval of a school. 8 C.F.R. § 214.3(b) specifies required supporting evidence, in pertinent part, as follows:

> Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he or she is authorized to do so to the effect that it is licensed, approved, or accredited....A school catalogue, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the size of its physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees, and finances (including a certified copy of accountant's last statement of school's net worth, income, and expenses).

Upon initial submission, the petitioner submitted a copy of its Air Agency Certificate from the Federal Aviation Administration (FAA) as evidence that it is an approved pilot school with the following ratings: Private Pilot, Commercial Pilot, Instrument Rating, and Flight Instructor. However, the petitioner has failed to show that it has also been licensed or approved to operate in the state of Texas, or that Texas does not require such licensure or approval in addition to approval from the FAA.

Furthermore, the record of proceeding does not contain any school catalogue or any other evidence describing the size of the petitioner's physical plant, nature of its facilities for study and training, educational, vocational or professional qualifications of the teaching staff, salaries of the teachers, attendance and scholastic grading policy, amount and character of supervisory and consultative services available to students and trainees. While the petitioner did submit a copy of its 1998 Federal tax return and balance sheets dated February 28, 1999 and December 31, 2002, the balance sheets are not certified by an accountant. The regulation clearly requires that the petitioner provide the Bureau with a *certified copy of an accountant's last statement of the school's net worth, income, and expenses.*

We note that the director's request for additional information only instructed the petitioner to submit "a recent copy of your accountant's last statement of school's net worth" and did mention the requirement of a certified copy. On remand, the district director should request the relevant evidence cited in 8 C.F.R. § 214.3(b), and should specifically notify the petitioner of the requirement of a certified copy of an accountant's last statement of the school's net worth, income and expenses.

Finally, without the information as discussed above, we are unable to determine whether the petitioner has met the eligibility requirements of 8 C.F.R. § 214.3(e)(1) which requires the petitioning school to establish that:

(i) It is a bona fide school;

(ii) It is an established institution of learning or other recognized place of study;

(iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(iv) It is, in fact, engaged in instruction in those courses.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. However, as the director failed to notify the petitioner of the deficiencies pertaining to eligibility in either the request for evidence or in the denial, this case shall be remanded to the district director as outlined above. After receipt and consideration of the additional evidence, the district director shall enter a new decision.

ORDER: The district director's decision is withdrawn. The case is remanded to the district director for action consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.